

ORIGINAL

COMMISSIONERS  
KRISTIN K. MAYES – Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

OPEN MEETING ITEM



0000094619

Interim Executive Director

92

ARIZONA CORPORATION COMMISSION

DATE: MARCH 17, 2009

DOCKET NOS.: W-20453A-06-0247; W-20454A-06-0248; W-20453A-06-0251; W-20454A-06-0251; W-01646A-06-0251; W-01868A-06-0251; W-02235A-06-0251; W-02316A-06-0251; W-02230A-06-0251; W-01629A-06-0251; and W-02240A-06-0251

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

NORTHERN SUNRISE WATER COMPANY and  
SOUTHERN SUNRISE WATER COMPANY  
(CC&N/SALE/TRANSFER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 26, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 31, 2009 and APRIL 1, 2009

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES - Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF  
9 NORTHERN SUNRISE WATER COMPANY FOR  
10 A CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY TO PROVIDE WATER SERVICE IN  
12 COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

13 IN THE MATTER OF THE APPLICATION OF  
14 SOUTHERN SUNRISE WATER COMPANY FOR  
15 A CERTIFICATE OF CONVENIENCE AND  
16 NECESSITY TO PROVIDE WATER SERVICE IN  
17 COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20454A-06-0248

18 IN THE MATTER OF THE JOINT APPLICATION  
19 OF NORTHERN SUNRISE WATER COMPANY  
20 AND SOUTHERN SUNRISE WATER COMPANY  
21 FOR THE APPROVAL OF SALE AND  
22 TRANSFER OF WATER UTILITY ASSETS, AND  
23 CANCELLATION OF CERTIFICATES OF  
24 CONVENIENCE AND NECESSITY, FOR  
25 MIRACLE VALLEY WATER COMPANY,  
26 COCHISE WATER COMPANY, HORSESHOE  
27 RANCH WATER COMPANY, CRYSTAL WATER  
28 COMPANY, MUSTANG WATER COMPANY,  
CORONADO ESTATES WATER COMPANY,  
AND SIERRA SUNSET WATER COMPANY,  
LOCATED IN COCHISE COUNTY, ARIZONA.

DOCKET NOS. W-20453A-06-0251  
W-20454A-06-0251  
W-01646A-06-0251  
W-01868A-06-0251  
W-02235A-06-0251  
W-02316A-06-0251  
W-02230A-06-0251  
W-01629A-06-0251  
W-02240A-06-0251

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATE OF HEARING:

January 15, 2009

PLACE OF HEARING:

Tucson, Arizona

DATES OF PUBLIC COMMENT:

June 23, 2008 (Sierra Vista, Arizona),  
July 8, 2008 (Tucson, Arizona)

IN ATTENDANCE:

Kirstin K. Mayes, Chairman  
William Mundell  
Mike Gleason  
Gary Pierce

ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

APPEARANCES:

Mr. Patrick Black, FENNEMORE  
CRAIG, PC, on behalf of Northern  
Sunrise Water Company and Southern  
Sunrise Water Company; and

Mr. Kevin Torrey, Staff Attorney, Legal  
Division, on behalf of the Utilities  
Division of the Arizona Corporation  
Commission.

**BY THE COMMISSION:**

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the  
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

**Procedural History**

1. On January 3, 2008, Northern Sunrise Water Company ("NSWC") and Southern  
Sunrise Water Company ("SSWC") (collectively "Applicants") filed with the Commission a  
"Compliance with Decision No. 68826." By their filing, Applicants sought to amend their  
Certificates of Convenience and Necessity ("CC&Ns") pursuant to Decision No. 68826 (June 29,  
2006).

2. In Decision No. 68826, the Commission approved the sale and transfer of water utility  
assets and cancellation of the CC&Ns of Miracle Valley Water Company, Inc., Cochise Water Co.,  
Horseshoe Ranch Water Company, Crystal Water Company, Mustang Water Company, Coronado  
Estates Water Company and Sierra Sunset Water Company (collectively "McLain Water Systems");  
and conditionally granted the applications of NSWC and SSWC for new CC&Ns to provide water  
utility service to the former McLain Water Systems.

3. In Decision No. 68826, the Commission recognized that the former owner of the  
McLain Water Systems had not kept adequate records, and that at the time of the sale of the systems  
to Applicants there was an unknown number of customers who were receiving water from the  
McLain Water Systems but who were not located within the boundaries of the former McLain Water

1 Systems' CC&Ns.<sup>1</sup> Consequently, the Commission ordered the Applicants to file by December 31,  
2 2007, "applications for approval to extend their CC&Ns to areas being served outside of the CC&N  
3 approved in this case."

4 4. By Procedural Order dated February 28, 2008, the matter was set for hearing on July  
5 8, 2008, and the Applicants were ordered to mail notice of the hearing to the affected property  
6 owners.

7 5. On April 29, 2008, Applicants filed a Notice of Filing Proof of Publication and  
8 Mailing, indicating they mailed notice to affected property owners on April 18, 2008, and April 24,  
9 2008.

10 6. In response to the notice, the Commission received a large number of requests from  
11 property owners to have their property excluded from the proposed extension area. It appeared from  
12 the responses to the notice that property owners were confused about the effect of the application on  
13 their use of private wells, and that the notice was sent to property owners who would not be included  
14 in the expansion.

15 7. To better address customer concerns, by Procedural Order dated June 3, 2008, the  
16 Commission scheduled a Public Comment meeting on June 23, 2008, in Sierra Vista, Arizona.

17 8. The June 23, 2008, Public Comment meeting highlighted that there remained  
18 confusion about which areas were being proposed to be included in the Applicants' certificated areas.  
19 Furthermore, residents of the area expressed concern about the effect of the expanded NSWC and  
20 SSWC CC&N areas on the aquifer and surrounding riparian areas, including the San Pedro and  
21 Babocamari Rivers.

22 9. On June 27, 2008, the Commission's Utilities Division ("Staff") filed its Staff Report  
23 addressing the Applicants' request to extend their CC&Ns. Staff recommended conditional approval  
24 of a smaller area.

25 10. On June 30, 2008, former Commissioner Mundell filed a letter in the Docket  
26 requesting that the July 8, 2008, hearing be continued to allow additional notice to the landowners in  
27

28 <sup>1</sup> Decision No. 68826 at Findings of Fact No. 102-106 at pp 26-28.

1 the requested extension areas.

2 11. On July 1, 2008, Applicants filed a Request for Revised Procedural Schedule.  
3 Applicants supported Commissioner Mundell's request, and stated that because they had not received  
4 the Staff Report until June 30, 2008, they needed additional time to respond.

5 12. By Procedural Order dated July 2, 2008, the procedural schedule was suspended and  
6 the hearing continued indefinitely. A Procedural Conference was set for July 8, 2008, for the purpose  
7 of discussing how to provide notice and establishing a new schedule for the proceeding. It was also  
8 determined to reserve the July 8, 2008 date for additional Public Comment.

9 13. A Public Comment meeting was convened on July 8, 2008, at the Commission's  
10 Tucson offices. Residents continued to be concerned about the effects of increased groundwater  
11 pumping from development in the area as well as about the boundaries of the extension area.

12 14. At the July 8, 2008, Procedural Conference, the parties discussed the need and desire  
13 to provide effective notice to the property owners who will be affected by the applications. By  
14 Procedural Order dated July 14, 2008, Applicants and Staff were ordered to mutually develop a  
15 proposed form of notice, such notice to include detailed maps to assist affected property owners in  
16 determining whether their property would be affected by the application. Staff and the Applicants  
17 were directed to file their proposed form of notice and their recommendations for dissemination of  
18 the notice. In addition, the Procedural Order provided that other interested parties would have at least  
19 ten (10) days to file objections or comments to the proposed form of notice and any additional  
20 recommendations, and further provided that the Hearing Division would schedule a Procedural  
21 Conference to discuss the adequacy of the form of notice and to establish other procedural guidelines  
22 in this matter, including, but not necessarily limited to, setting a hearing date and deadline for  
23 intervention.

24 15. On October 16, 2008, Applicants and Staff filed a Notice of Filing Proposed Form of  
25 Public Notice and Maps, and recommended that the notice and maps be sent to those property owners  
26 located within the requested service area.

27 16. On October 29, 2008, Mr. Stephen Cockrum, an intervenor in this matter, filed  
28 comments to the proposed form of notice.

1           17.     On November 7, 2008, the parties appeared at a Procedural Conference to discuss the  
2 form of notice and to determine a procedural schedule. The parties agreed to several modifications to  
3 the proposed form of notice, and agreed that a hearing to take place at the Commission's Tucson  
4 offices in January, 2009, would be appropriate and in the public interest.

5           18.     On November 7, 2008, Commissioner Mayes filed a letter in the Docket ("Mayes  
6 Letter"), requesting the parties to address the impact of groundwater pumping in the Applicants'  
7 service areas on existing wells and surrounding riparian areas.

8           19.     By Procedural Order dated November 10, 2008, the matter was set for hearing on  
9 January 15, 2009, and procedural guidelines were established.

10          20.     On November 28, 2008, Applicants filed a Response to the Mayes Letter.

11          21.     On November 30, 2008, Applicants mailed notice of the hearing to the affected  
12 property owners as directed by the November 10, 2008, Procedural Order.

13          22.     On December 11, 2008, Staff filed a Response to the Mayes Letter.

14          23.     On December 19, 2008, Applicants filed a Response to the Staff Report.

15          24.     On December 19, 2008, Mr. Cockrum filed comments and his observations  
16 concerning this matter.<sup>2</sup>

17          25.     The hearing convened as scheduled on January 15, 2009, before a duly authorized  
18 Administrative Law Judge. Greg Sorensen, director of operations for Algonquin Water Services, the  
19 parent company of NSWC and SSWC, testified for the Applicants, and Mr. Steve Olea and Ms.  
20 Vicky Wallace testified for Staff. In addition, in response to Commissioner Mayes' request that a  
21 representative of the Arizona Department of Water Resources ("ADWR") be made available at the  
22 hearing, Jeff Tannler, Area Director of the Tucson Active Management Area Office of ADWR, also  
23 testified.

24          26.     On February 3, 2009, the Applicants filed Late Filed Exhibits, including a revised  
25 legal description for the expansion area being recommended by Staff; an affidavit concerning the

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26  
27 <sup>2</sup> At the November 7, 2008 Procedural Conference, Mr. Cockrum had indicated he would be available for a hearing  
28 anytime after January 12, 2009, but in his Comments, he states that subsequent events prevented his participation in the  
January 15, 2009 hearing. Consequently, Mr. Cockrum submitted his observations in writing. Mr. Cockrum's comments  
have been treated as public comment, as he was not available for cross-examination.

mailing of public notice; and a letter from Robert Dodds, president of Algonquin Water Services, Inc., regarding company discussions with representatives of Rain Valley Ranch concerning the extension of water service to the Rain Valley Ranch development.

27. On February 17, 2009, Applicants filed a Notice of Errata, which contained a corrected legal description for the SSWC proposed extension area.

28. Intervention in this matter had been granted to Mr. Cockrum in the initial sale proceeding. In addition, following the initial notice of the extension request, intervention was granted to Sharon Arcand and Raymond Baltrus; Charlotte Borghardt and Paul Goetz; David and Jennifer Lease; and Jeffrey and Marlene McDaniel.

### **The Application**

29. The Applicants' existing CC&N areas total 7.4 square miles and are located in the vicinity of Sierra Vista, in Cochise County, Arizona.

30. Applicants are not located in any Active Management Area ("AMA").

31. The Applicants are currently serving 350 customers in the NSWC area and 820 customers in the SSWC area. Between them, Applicants are serving 198 customers who are located outside of their certificated areas.

32. As originally filed, Applicants' requested extension areas included an area totaling 4.3 square miles. The Applicants believed that their proposed extension areas encompassed all existing customers and created reasonable and logical boundaries by extending the boundaries to section lines.<sup>3</sup>

33. In its Staff Report, Staff recommended that the extension area include 1.8 square miles. Staff recommended that approximately 2.5 square miles of the Applicants' proposed extension area not be included because there were no existing customers or water service in those areas or the property owners had requested not to be included.<sup>4</sup>

34. In the Staff Report, Staff noted that Applicants had completed all of the system improvements required by Decision No. 68826 (Exhibit B) for the Cochise, Horseshoe, Mustang,

<sup>3</sup> January 15, 2009 Hearing Transcript ("Tr") at p 10.

<sup>4</sup> Staff Report at p 6.

1 Crystal and Miracle Valley systems. At the time of the Staff Report, the required improvements for  
2 the Sierra Sunset and Coronado systems had not been completed, and NSWCC had been granted an  
3 extension for these improvements until December 31, 2008. Subsequent to the hearing, Staff filed a  
4 memorandum in the Docket that verified that Staff had inspected the improvement projects for the  
5 Coronado and Sierra Sunset systems, and recommended that the moratoria on new hook-ups for these  
6 systems be lifted. By Procedural Order dated February 9, 2009, it was recognized that pursuant to the  
7 terms of Decision No. 68826, the moratoria should be deemed lifted. With the lifting of the  
8 moratoria on Coronado and Sierra Sunset, all moratoria on new hook-ups for both NSWCC and SSWC  
9 have been lifted.

10 35. Staff believes that with the completion of the plant improvements, all of the systems  
11 have adequate well and storage capacities to serve the existing and proposed CC&N extension areas.  
12 Staff stated further that no "used and useful" determination of the completed and proposed capital  
13 plant improvements were made and no particular treatment should be inferred for rate making or rate  
14 base purposes.

15 36. Staff recommended that the Commission approve the Applicants' application for  
16 extension of the CC&Ns to include only those areas, as identified by Staff, on the following  
17 conditions:

18 (a) The Applicants charge their authorized rates and charges in the extension areas.

19 (b) The Commission put the Applicants on notice that any future CC&N extension  
20 applications will not be deemed sufficient without documentation from ADWR stating that there is a  
21 100 year adequate water supply for the then existing CC&N area (along with any other typically  
22 required sufficiency information).

23 (c) Applicants file with Docket Control, as a compliance item in this docket, copies of  
24 the Cochise County franchise agreements needed to serve the requested CC&N extension areas  
25 within two years of the effective date of an order in this proceeding.

26 (d) That the Commission deny the Applicants' request for the CC&N extension areas  
27 outside the boundaries of the areas recommended by Staff, and that the Applicants be required to file  
28 with Docket Control an amended legal description for the Staff-recommended area, no later than 30



1 days after the effective date of the order granting this application.<sup>5</sup>

2 37. In his December 19, 2008 Comments, Mr. Cockrum expressed the opinion that  
3 Applicants' initial requested area was too expansive. Mr. Cockrum believed that if a narrow view is  
4 applied to the intent expressed in Decision No. 68826, many of the concerns expressed in the Mayes  
5 Letter could be eliminated.

6 38. The Company subsequently agreed to adopt Staff's recommended service area.<sup>6</sup> The  
7 legal description for the agreed-upon extension area is attached hereto as Exhibit A, and incorporated  
8 herein by reference.

9 39. Applicants agreed to all of Staff's recommendations, except for item (b) that would  
10 require them to show a 100 year water supply for all of their existing service territory as a  
11 prerequisite for any future request to extend their CC&N areas. Applicants estimate the cost to  
12 complete the hydrological studies and reports required by ADWR to obtain either an Analysis of  
13 Assured Water Supply or Physical Availability Determination ("PAD"), for their entire CC&N area,  
14 would be \$600,000 to \$1.5 million and assert that effort would not provide benefits to their existing  
15 customers.<sup>7</sup> Applicants argue that Staff has opined that the Applicants' water systems have adequate  
16 capacity and storage to serve the existing area, including the proposed Babocomari development,  
17 such that a PAD or analysis of adequate supply is not needed. Applicants note that under the newly  
18 adopted administrative rules for the establishment of new CC&Ns or the extension of existing  
19 CC&Ns, water companies must provide a PAD, Analysis of Adequate Water Supply, or Analysis of  
20 Assured Water Supply issued by ADWR for the proposed CC&N area. Applicants argue that Staff's  
21 recommended condition to provide these reports for the existing CC&N area is unduly burdensome,  
22 and would have the effect of establishing filing standards for Applicants that are different and more  
23 stringent than those for similarly situated water companies. Applicants also argue the condition is a  
24 collateral attack on Decision No. 68826, because during the Open Meeting when the Recommended  
25 Opinion and Order ("ROO") was under consideration, the Commission voted to delete provisions in  
26 the ROO that would have required Applicants to file a copy of the Letter of Water Adequacy for the

27 <sup>5</sup> Applicants provided an updated legal description in their late-filed exhibits.

28 <sup>6</sup> Tr at p 12.

<sup>7</sup> Tr at pp 19-21.

1 Babocomari development within three years of the effective date of the Decision.<sup>8</sup> Applicants claim  
2 that adopting Staff's condition would essentially re-impose the requirement that was deleted.

3 40. Staff explained that normally Staff would recommend that an applicant demonstrate  
4 that there is an adequate water supply for a new extension area (and not for its existing certificated  
5 area), but in this case, because the Applicants were previously granted an extension to include the  
6 Babocomari area without having to show a PAD or Letter of Adequate Water Supply, Staff is  
7 recommending that for the next extension, Applicants be required to show an adequate supply for  
8 their entire service area.<sup>9</sup>

9 41. Staff explained further that it is not recommending that the Applicants produce a PAD  
10 or Letter of Adequate Water Supply for the current extension request because the Commission had  
11 ordered the Applicants to bring this application in Decision No. 68826 in order to clean-up the  
12 boundaries of the service areas, and because the extension area includes primarily existing customers  
13 such that the water usage will not increase significantly as a result of this extension request.<sup>10</sup>

14 **Analysis and Discussion**

15 42. Staff's recommended extension area is narrowly tailored to include only existing  
16 customers, plus a few additional parcels that would prevent a "Swiss cheese" effect in the CC&N  
17 area. It comports with the requirements and spirit of Decision No. 68826. In most cases, the  
18 Commission requires evidence that an extension area has adequate water before granting an  
19 extension. However, in this case, Staff has not made such recommendation because Applicants were  
20 ordered to file this application, and are already providing service to the affected property. The  
21 current extension will not add significant, if any, additional demand on the existing systems or the  
22 aquifer. For these reasons, we agree with Staff that Applicants should not be required to provide a  
23 Letter of Adequate Water Supply or PAD for the current extension request.

24 43. When considering the sale of the McLain Water Systems to the Applicants, Staff had  
25 recommended that NSWC provide a Letter of Adequacy or PAD for the Babocomari area. The  
26 Applicants opposed Staff's recommendation because they believed that the Babocomari developers

27 <sup>8</sup> See Response to Staff Report at pp 4-5.

28 <sup>9</sup> Tr at pp 97-99.

<sup>10</sup> Tr at p 118.

1 would not donate a prime site for facilities that would benefit the Coronado system if the Babocomari  
2 area could be deleted from the CC&N for failure to meet an "artificial timeline."<sup>11</sup> The Commission  
3 did not accept Staff's recommendation, and the Babocomari extension area was conditionally added  
4 to NSWC's service area without having to demonstrate an adequate water supply. The Babocomari  
5 area has not developed and the Applicants improved the Coronado system without the promised  
6 Babocomari parcel by improving an existing well and interconnecting the Coronado and Sierra  
7 Sunset systems.<sup>12</sup>

8 44. Although the Commission did not require a PAD or Letter of Adequate Water Supply  
9 for the Babocomari area, it did require NSWC to file an Approval to Construct ("ATC") for the  
10 Babocomari area facilities within three years of the effective date of Decision No. 68826.<sup>13</sup>

11 45. Given the slower than expected development of the Babocomari extension area, it  
12 appears unlikely that NSWC will be able to meet the requirement to provide an ATC for the  
13 Babocomari area by June 29, 2009. In such event, the Commission could, after due process, proceed  
14 to delete the Babocomari area from the NSWC certificated area. Because the future Babocomari  
15 development will put the greatest demand on the groundwater supply<sup>14</sup> and because no demonstration  
16 of water availability has been made, it may be in the public interest to delete the Babocomari area  
17 from the NSWC CC&N area.

18 46. As an alternative to Staff's recommendation that Applicants need to provide a PAD or  
19 Letter of Adequate Water Supply for their entire service areas before any future expansion will be  
20 considered, we find it is reasonable to approve an extension of time for NSWC to file an ATC for the  
21 Babocomari area conditioned on the Company also providing a PAD or Letter of Adequate Water  
22 Supply showing a 100 year water supply for the Babocomari area within three years of the effective  
23 date of this Decision. This requirement gives the developer additional time to demonstrate a 100 year  
24 supply.

25 47. This requirement would affect the area of future growth with the greatest potential

26 <sup>11</sup> Decision No. 68826 at Findings of Fact No. 35 at p 7.

27 <sup>12</sup> Tr at p 59.

<sup>13</sup> Decision No. 68826 at p 30.

28 <sup>14</sup> Potentially, the Babocomari area represents 1,500 new single family units. See Decision No. 68826 at Findings of Fact No. 30 at p.6.

1 impact on the aquifer, and would not burden an individual lot owner with having to demonstrate a  
2 100 year water supply for the entire certificated area in order to receive service from NSWC.

3 48. Further, a condition to demonstrate a 100 year water supply would not place an undue  
4 burden on the Babocamari developer because Cochise County appears to have adopted the same  
5 requirement as part of the plat approval process.<sup>15</sup>

6 49. Staff's recommendations, as modified herein, are reasonable and should be adopted

7 50. There are a number of property owners in the current and proposed extension areas  
8 with existing wells. There has been some concern expressed in this docket that development in the  
9 area will negatively impact the use of these pre-existing private wells and force these owners to take  
10 service from the Applicants as a result.

11 51. Therefore, as a means of addressing these concerns, a waiver of certain utility fees is  
12 appropriate. In the event a landowner located within the Applicants' CC&N areas, with a well in use  
13 prior to the date of this Decision, seeks service from Applicants because that well no longer has  
14 adequate production, such well owner shall receive a waiver from any off-site hook-up fees that  
15 would otherwise apply to new service. Under these circumstances, such landowners would not be  
16 required to show the well became unusable due to activities of the Applicants. Such waiver does not  
17 apply to meter and service line installation charges.

#### 18 Other Issues

##### 19 East Slope Water Co. Overlap

20 52. Staff identified that 18 of SSWC's customers previously thought to be within its  
21 existing CC&N are actually located within the existing CC&N service area of the East Slope Water  
22 Company ("East Slope").<sup>16</sup>

23 53. Staff recommends that SSWC negotiate a borderline agreement with East Slope  
24 similar to the one between Ask Creek Water Company and Graham County Utilities, that would  
25 allow SSWC to continue to service these customers.<sup>17</sup>

27 <sup>15</sup> Tr at p 17.

28 <sup>16</sup> Tr at p 103.

<sup>17</sup> Tr at p 104.

1           54.     The Company agrees that this recommendation is reasonable.<sup>18</sup>

2           55.     We concur. SSWC should contact East Slope and use its best efforts to negotiate a  
3 borderline agreement and should file such agreement with the Commission for review and approval  
4 within 120 days of the effective date of this Decision.

5     **Whetstone Water Improvement District Request**

6           56.     By Letter dated December 26, 2008, the Whetstone Water Improvement District  
7 (“Whetstone”) requested that the Commission not grant the extension for NSWC in the area north of  
8 Ivy Road and east of Sands Road to allow the District time to approach current landowners to  
9 determine if they would like to be annexed into the District.

10          57.     Granting NSWC a CC&N that includes the area across the street from Whetstone  
11 would not prevent Whetstone from drilling a well in the certificated area. Whetstone did not appear  
12 at the hearing, nor provide any evidence or indication that any property owners in the extension area  
13 would prefer to take service from Whetstone. The property owners in the area of interest to  
14 Whetstone are already customers of NSWC. Consequently, Whetstone has not demonstrated that  
15 approving the extension in this area is not in the public interest.

16     **Compliance**

17          58.     According to Staff, Applicants have no delinquent Commission compliance items.

18          59.     Applicants have approved curtailment and backflow prevention tariffs that became  
19 effective on April 4, 2007.

20          60.     ADEQ has determined that all the water systems are currently delivering water that  
21 meets water quality standards required by the Arizona Administrative Code, Title 18, Chapter 4.

22          61.     Applicants have demonstrated they have the technical expertise and financial  
23 capability to operate their water systems.

24                     **CONCLUSIONS OF LAW**

25          1.     NSWC and SSWC are public service corporations within the meaning of Article XV  
26 of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

27  
28     <sup>18</sup> Tr at p 24.

2. The Commission has jurisdiction over NSWC and SSWC and the subject matter of the application.

3. Notice of the application was provided in accordance with law.

4. There is a public need and necessity for water service in the proposed extension areas as set forth in Exhibit A.

5. NSWC and SSWC are fit and proper entities to receive CC&Ns to provide water service in the proposed extension areas.

6. It is reasonable to extend the deadline for NSWC to file a copy of the ATC for the Babocamari extension area for a period of three years conditioned on the Company also filing within three years, a copy of a PAD or Letter of Adequate Water Supply showing a 100 year water supply for the area.

7. Staff's recommendations, as modified herein, are reasonable and should be adopted.

### **ORDER**

IT IS THEREFORE ORDERED that the application of Northern Sunrise Water Company and Southern Sunrise Water Company for an extension of their Certificates of Convenience and Necessity to provide water service in Cochise County for that property described in Exhibit A hereto, is approved as conditioned herein.

IT IS FURTHER ORDERED that Northern Sunrise Water Company and Southern Sunrise Water Company shall charge their authorized rates and charges in the extension areas.

IT IS FURTHER ORDERED that Northern Sunrise Water Company is granted an extension of time to comply with Decision No. 68826 conditioned upon compliance with the following ordering paragraph within the time specified.

IT IS FURTHER ORDERED that within three years of the effective date of this Decision, Northern Sunrise Water Company shall file, in this docket as a compliance item, a copy of the developer's Approval to Construct and a copy of a Physical Availability Determination or a Letter of Adequate Water Supply for the Babocamari extension area that shows that there is adequate water to provide service to the Babocamari area for 100 years, and if Northern Sunrise Water Company fails

1 to file the requisite documentation by the deadline, after due process, the Babocamari CC&N  
2 extension shall be null and void.

3 IT IS FURTHER ORDERED that Northern Sunrise Water Company and Southern Sunrise  
4 Water Company shall file with Docket Control, as a compliance item in this docket, copies of the  
5 Cochise County franchise agreements needed to serve the CC&N extension areas, as set forth in  
6 Exhibit A, within two years of the effective date of this Decision.

7 IT IS FURTHER ORDERED that in the event a landowner located within the Applicants'  
8 CC&N areas, with a well in use prior to the date of this Decision, seeks service from Applicants  
9 because that well no longer has adequate production, such well owner shall receive a waiver from any  
10 off-site hook-up fees that would otherwise apply to new service. Under these circumstances, such  
11 landowners would not be required to show the well became unusable due to activities of the  
12 Applicants. Such waiver does not apply to meter and service line installation charges.

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1 IT IS FURTHER ORDERED that Southern Sunrise Water Company shall contact East Slope  
2 Water Company and use its best efforts to negotiate a borderline agreement and shall file such  
3 agreement with the Commission for review and approval within 120 days of the effective date of this  
4 Decision.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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8

9 CHAIRMAN

COMMISSIONER

10  
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12  
13 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim  
14 Executive Director of the Arizona Corporation Commission,  
15 have hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 his \_\_\_\_ day of \_\_\_\_, 2009.

18 MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

19 DISSENT \_\_\_\_\_  
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21 DISSENT \_\_\_\_\_  
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1 SERVICE LIST FOR:

NORTHERN SUNRISE WATER COMPANY and  
SOUTHERN SUNRISE WATER COMPANY

2  
3 DOCKET NOS.:

W-20453A-06-0247; W-20454A-06-0248; W-20453A-  
06-0251; W-20454A-06-0251; W-01646A-06-0251; W-  
01868A-06-0251; W-02235A-06-0251; W-02316A-06-  
0251; W-02230A-06-0251; W-01629A-06-0251; and  
W-02240A-06-0251

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6 Patrick Black  
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Phoenix, Arizona 85007

23 Ernest Johnson, Director  
24 Utilities Division  
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25 1200 West Washington Street  
Phoenix, Arizona 85007

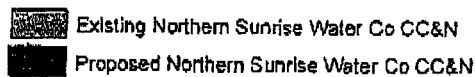
**EXHIBIT A****Northern Sunrise Water Company – CC&N Extension**

- Township 20 South, Range 19 East, G.& S.R.M., Cochise County, Arizona

The South 1/2 of the Northwest 1/4; the Southwest 1/4 of the Northeast 1/4; the West 1/2 of the Southeast 1/4 of the Northeast 1/4; the Northwest 1/4 of the Southeast 1/4; the Southwest 1/4 of the Southeast 1/4; the West 1/2 of the Northeast 1/4 of the Southeast 1/4; the West 1/2 of the Southeast 1/4 of the Southeast 1/4; and the Southwest 1/4 except the Southeast 1/4 of the Southwest 1/4 thereof, all in Section 12.

The North 1/2 of Section 13, except the West 1/2 of the Northeast 1/4 of the Northwest 1/4 thereof and except the Southwest 1/4 of the Northwest 1/4 thereof.

The West 1/2 of the Northwest 1/4; the East 1/2 of the Northwest 1/4 of the Northeast 1/4; the East 1/2 of the Southwest 1/4 of the Northeast 1/4; the West 1/2 of the Northeast 1/4 of the Northeast 1/4; the West 1/2 of the Southeast 1/4 of the Northeast 1/4; the Southwest 1/4, except any portion lying South of the North right-of-way line Arizona Highway No.82; the Northwest 1/4 of the Southeast 1/4, except any portion lying South of the North right-of-way line Arizona Highway No.82; and the West 1/2 of the Northeast 1/4 of the Southeast 1/4, except any portion lying South of the North right-of-way line Arizona Highway No.82; all in Section 14.



**ALGONQUIN  
WATER  
CC&N EXTENSION  
NORTHERN SUNRISE**

**Southern Sunrise Water Company – CC&N Extension**

- Township 23 South, Range 21 East, G.& S.R.M., Cochise County, Arizona

The South 1/2 of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 4.

The East 1/2 of the Southwest 1/4 of Section 8.

The Northwest 1/4 of Section 9.

The North 1/2 of the Southwest 1/4; the Southwest 1/4 of the Northwest 1/4; all in Section 17.

- Township 24 South, Range 22 East, G.& S.R.M., Cochise County, Arizona

The North 1/2 of the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section 6.

DECISION NO.

